

NOV 27 1985

No. 84-1667

JOSEPH F. SPANIOL, JR.  
CLERK

In The  
**Supreme Court of the United States**  
October Term, 1984

BETHEL SCHOOL DISTRICT NO. 403; CHRISTY B.  
INGLE; DAVID C. RICH; J. BRUCE ALEXANDER;  
AND GERALD E. HOSMAN,

*Petitioners,*

vs.

MATTHEW N. FRASER, A MINOR, AND E. L.  
FRASER, AS HIS GUARDIAN AD LITEM,

*Respondents.*

ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**JOINT APPENDIX**

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**Petition for Writ of Certiorari filed April 19, 1985  
Certiorari granted October 7, 1985**

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## DOCKET ENTRIES

<u>DATE</u>	<u>NR</u>	<u>FRASER vs. BETHEL PROCEEDINGS</u>
1983		
May 23	1	Complaint Iss Summ
May 23	2	Notice Of Hearing On Tro & Merits . . . 5-31-83 at 8:30 am Briefs to be filed by 5-27-83
May 27	3	Pltf Trial Brief
May 27	4	Pltff Exhibits (1) 5 Letters, (2) School Dist Decision (3) Speaker Form
May 27	5	Answer Of Def
May 27	6	Def Memo Of Auth In Opp To Mot For Prelim Inj
June 3		Fof&Col Def
June 3	—	Declaratory Jdmt Lodged
June 3	—	Fof&Col Pltff
June 3		Declaratory Jdmt Lodged
June 3	—	Proposed Injunction Lodged All Doc to Chambers Attn: JED
May 31	6a	Minutes Of Hearing on Tro & Merits Speak not Obscene Ct to Sign Decl Jdmt Def Mot to Stay Denied Hearing on Damages Set 7-25-83
May 25	2a	Praecipe Iss Trial Sub
June 1	6b	AFF Of Svc Upon Sean Madden
June 1	6c	AFF Of Svc Upon David Nusbaum
June 8	7	Fof&Col (Jet) CPS MLD
June 8	8	Injunction & Declaratory Jdmt CPS MLD
June 21	9	Motion To Amend Fof&Col

June 30 10 Order (Jet) Pltff Mot to Amend Fof&Col  
... Denied CPS MLD

July 8 11 Notice of Appeal by defts. cc: ensl & C/A

July 18 12 Transcript Designation

Aug. 30 13 Pltff AFF Of Costs & Attny Fees

Aug. 30 — Jdmt Lodged. To Deb for Chambers

Sept. 1 14 Jdmt (Jet) in Favor of Pltff \$278.00 Dam-  
ages, \$12,750.00 Costs & Fees CPS MLD

Sept. 6 15 Reporter's Transcripts of proceedings  
held 5-31-83 (Orig. & 1 copy)

Sept. 8 — Certificate or Record spys to ensl & C/A

Sept. 15 16 Notice of Appeal By Def Upon Jdmt Entered 9-1-83  
Appeal Packet Sent to All Cnsl & 9 CCA  
Sent 9-20-83

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**COMPLAINT FOR VIOLATION OF CIVIL RIGHTS  
SEEKING DECLARATORY RELIEF,  
INJUNCTION, AND DAMAGES**

Plaintiffs allege:

**I. PARTIES AND JURISDICTION**

1. Plaintiffs Matthew N. Fraser and E.L. Fraser are citizens of the United States of America and residents of Pierce County in the State of Washington. Plaintiff Matt Fraser is also a Senior enrolled at Bethel High School in Spanaway, Washington.

2. Defendants Christy B. Ingle, David C. Rich, J. Bruce Alexander, and Gerald E. Hosman, are now, and at all times material hereto were, employees of the Bethel School District No. 403 and residents of Pierce County.

3. Defendant Bethel School District No. 403 is a municipal corporation and governmental subdivision of the State of Washington located in Pierce County, and is empowered, among other things, to sue and be sued pursuant to RCW 4.08.120 and RCW 28A.58.010.

4. This action arises under the United States Constitution, particularly under the provisions of the First and Fourteenth Amendments to the Constitution of the United States, and under federal law, particularly Title 42 of the United States Code, Section 1983.

5. This court has jurisdiction of this cause under Title 28 of the United States Code, Sections 1333(3) and 2201.

**II. FACTS OF THE CASE**

6. The plaintiff, Matthew Fraser, is academically a very good student. He is a member of the Honor Society

and the debate team and has been awarded "Top Speaker" in statewide debate championships two years in a row.

7. In preparation for election of next year's student government officials, Fraser drafted a political nominating speech for a candidate for student body vice-president, extolling the leadership qualities of the candidate. The text of the speech is as follows:

I know a man who is firm. He's firm in his pants; he's firm in his shirt; his character is firm. But most of all, his belief in you, the students of Bethel, is firm.

Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts. He drives hard, pushing and pushing until finally he succeeds.

Jeff is a man who will go to the very end, even the climax, for each and every one of you.

So vote for Jeff for A.S.B. Vice President. He'll never come between you and the best our high school can be.

8. For those who are inclined to notice such things, the speech contains language with secondary meanings which have sexual connotations. The secondary meanings do not explicitly describe any sexual activity and the speech does not contain any patently offensive words.

9. The secondary meanings contained in the speech were intended by Matt Fraser to be serious rhetorical devices calculated to serve the political purpose of winning the election for his candidate. Just as adult politicians begin their speeches with a joke to develop a rapport with their audiences, Fraser used the most popular and common form of humor among students his age to develop such a rapport with his audience.

10. Before delivering this speech to the assembled students, Fraser privately presented his speech to three different Bethel High School teachers, seeking their comments.

11. Although he stated that it might "raise some eyebrows", one of the three teachers refrained from making any judgment and did not advise him not to give the speech.

12. The other two teachers indicated that they thought the speech was in poor taste and advised Fraser not to deliver it. However, the teachers left the decision up to Fraser. None of the teachers suggested that the speech might violate a school rule or subject Fraser to any kind of punishment. None of the teachers went to the administration prior to the assembly to suggest that they speak to Fraser regarding his speech.

13. On Tuesday, April 26, an all-school assembly was convened after the last class and just before the end of the school day for the purpose of presenting speeches for the election of student government officials. Students were not required to attend the assembly. Fraser delivered his speech at the time and place selected by school authorities.

14. Fraser's speech was well received by the students. The students indicated their approval by laughing, cheering, and clapping. No students visibly indicated disapproval. The speech created no student disturbance at the time of delivery, other than the same sort of applause and laughter which had been accorded previous speakers. The delay between Mr. Fraser's speech and his candidate's speech, which followed, was no longer than that between other speeches. The entire assembly was controlled without difficulty by a student, the ASB Vice-President. Following the speeches by Fraser and his can-

dicate, the assembly was concluded and dismissed. Since the school day had ended, the students left the school building without incident.

15. The speech achieved its intended political effect. Fraser's candidate won the election by a wide margin.

16. During the preceding two years Fraser was an outspoken critic of the school and its administration, generating hostility from the administration and some members of the faculty. Fraser's criticism included oral comments and published editorials in the school newspaper.

17. Fraser particularly criticized Assistant Principal Morrison, accusing him of attempting to misuse public school funds to purchase sixty dollars worth of paint to repaint a local private bridge. Fraser further accused Morrison of switching the source of money for the purchase to the Student Council funds without obtaining prior approval from the Student Council or its Executive Board and then attempting to cover up this improper expenditure.

18. After the speech was delivered, Assistant Principal Morrison made statements to the effect that Fraser had finally made a speech for which he could be punished. Morrison further stated: "We can't let him get away with this one."

19. In the evening of April 26, the day the speech was given, Bethel Principal David Rich telephoned Fraser at home and told him to appear in the morning for disciplinary action. The following morning, Fraser met with Assistant Principal Christy B. Ingle about five minutes before the beginning of the first class. To give Fraser notice of the charges against him, Ingle simply provided Fraser with copies of the letters of five teachers regarding his speech. Three of the letters expressed personal

judgments that the speech was "inappropriate", "distasteful", "obscene", and contained "blatant sexual references".

20. Ingle gave Fraser an opportunity to respond to the charges contained in the letters. After reading the letters, Fraser defended himself orally for about 15 minutes. None of the letters indicated that his speech had disrupted the assembly nor that it had produced disruptive student conduct during or following the assembly.

21. Ingle concluded that Fraser's speech violated the rule against disruptive conduct which states:

Conduct which materially and substantially interferes with the educational process is prohibited including the use of obscene, profane language or gestures.

Ingle imposed punishment consisting of a three day suspension effective immediately and removal of his name from consideration as a graduation speaker.

22. Approximately one year ago another student published an essay in the school's literary magazine which, through sexual double meanings, described in detail the sexual conquest of a female by a male, including sexual intercourse. A copy of this essay is attached as Exhibit A. This student was not suspended for publishing the essay in the school magazine and was a speaker at graduation.

23. In a nomination speech given one year earlier, another student gave a speech of a similar character to Fraser's. This speech contained sexual secondary meanings that were at least as clear and received at least as much emphasis as the secondary meanings in Fraser's speech. This student was not suspended for delivering his speech.

24. Immediately after Ingle announced Fraser's punishment, Fraser indicated that he wished to appeal. Because the Principal, David Rich, was not at the school that day, Ingle stated that she was the appropriate subordinate official to rule upon Matt's request for immediate appeal. Ingle then denied the appeal, indicating that the suspension would not be stayed pending any further appeal.

25. Upon the return of Principal David Rich the following morning, Fraser appealed to the Principal seeking a stay of his punishment until further appeals could be concluded. The Principal denied Fraser's request to stay the suspension for Thursday, the second day of the suspension. The Principal stated that he did not want Fraser in school on Thursday to prevent Fraser from participating in student rallies and protests organized to object to Fraser's suspension from school.

26. However, the Principal granted Fraser's request to stay pending appeal the third day of suspension and the removal of his name from the ballot for graduation speaker.

27. Following Fraser's suspension, Bethel High School students put up posters, with their signatures affixed, opposing the administration's decision. Although the posters contained words with secondary sexual meanings which were as explicit as the words in Fraser's speech such as "Don't Be Hard On Matt" and "Stand Firm Matt", the Principal did not suspend or punish these students.

28. Through his counsel, Fraser requested in writing a grievance review from the District Superintendent, Gerald E. Hosman. A copy of the request for grievance review is attached as Exhibit B. Fraser's counsel also fur-

nished the Superintendent with a copy of the essay containing sexually explicit secondary meanings that was published the year before.

29. Two weeks after the request for review was submitted, the Superintendent's designee, J. Bruce Alexander, ruled against Fraser, upholding the school administration in all respects.

30. On May 19, after the Superintendent's decision was announced, Fraser informed the Principal that he would file this complaint in Federal Court. Then, disregarding Fraser's claim that an election for graduation speaker without Fraser's name on the ballot would be unconstitutional, and disregarding Fraser's request that his name be left on the ballot and an alternate be selected to speak in case it was later determined that Fraser could legally be precluded from being a graduation speaker, the Principal conducted the election without Fraser's name on the ballot.

31. Further administrative appeal to the District School Board would be futile and a waste of the limited time remaining before graduation, which is set for June 8.

32. School authorities have a recognized, and constitutionally permissible, societal role in inculcating community values. However, this legitimate State interest must be implemented in the manner which least restricts the rights of free speech under the First Amendment. In this case, alternative responses were available to the administration which would have a less chilling effect on free speech. In particular, school authorities could use more speech in a battle of ideas to persuade Fraser that this sort of speech is not appropriate for student polities. This approach would be constitutionally permissible because school authorities would not be using the power of their office to punish students whose speech does not con-

form to community values. In addition, this alternative approach is recognized by experts in the field as having preferable effects upon the education of the students involved.

33. Under the rules of the Bethel High School Honor Society, if Fraser's suspension is upheld, Fraser will be removed as a member of the Honor Society, permanently damaging his future career.

34. Fraser's unlawful two day suspension has caused him damages which cannot be remedied by equitable relief. Additional damages will be inflicted if further punishment is carried out.

### III. LEGAL CLAIMS

35. The speech delivered by Fraser is protected by the First Amendment. The speech is not constitutionally obscene or disruptive. It was delivered at an appropriate time and place and in an appropriate manner. Punishment of Fraser under color of State law deprives Fraser of his civil rights to freedom of speech and chills the freedom of expression of all students of Bethel High School.

36. By presenting his speech to three teachers for their comments, Fraser gave school authorities opportunity for prior restraint. The failure of the three teachers to inform Fraser that his speech might violate school rules constitutes a license to Fraser to give the speech and estops school authorities from claiming a violation of the rules. Following this opportunity for prior restraint and implied license, the punishment of Matt Fraser violates his freedom of speech and rights to due process.

37. The selective enforcement of the rule against Matt Fraser, when it has not been enforced against other

students in similar situations, violates Fraser's right to equal protection. This selective enforcement also violates the First Amendment because Bethel students know that Fraser is being singled out as a result of his criticism of school administration, chilling the freedom of other students to criticize the administration.

38. As applied, the rule against disruptive behavior is unconstitutionally vague. It does not give adequate notice regarding what forms of behavior are proscribed, violating due process.

39. The vagueness of the rule against disruptive behavior causes it to be overbroad with respect to the First Amendment. The overbreadth chills freedom of speech by implying that even speech which might be constitutionally protected is proscribed.

40. Precluding Fraser from being a graduation speaker is not a constitutionally valid punishment. Fraser was given no notice that such punishment might be imposed for the violation of any rule, infringing Fraser's rights to due process.

41. Assistant Principal Ingle's consideration of Fraser's request for immediate appeal violated Fraser's right to due process. Although the most appropriate person to consider the appeal, the Principal, was not available, the appeal should have been considered by another official, perhaps Assistant Principal Morrison or the Superintendent, because Ingle was the original decision-maker.

42. The failure by Principal David Rich to stay pending appeal the second day's suspension as well as the third day's suspension violated Fraser's right to speech and assembly because the reason for the distinction was to

prevent Fraser's participation in rallies and protests by students criticizing the administration.

**WHEREFORE**, plaintiff seeks a judgment:

43. Declaring that the actions of Ms. Christy B. Ingle, Mr. David C. Rich, Dr. J. Bruce Alexander, Dr. Gerald E. Hosman, and Bethel School District No. 403 interfering with and punishing plaintiff's exercise of First Amendment rights, under color of law, are illegal and unconstitutional.

44. Entering a preliminary and permanent injunction restraining the agents and employees of the Bethel School District from imposing additional punishment or penalties upon Fraser and enjoining the Bethel School District from excluding Fraser as a graduation speaker.

45. Awarding damages to the plaintiff in an amount to be proved at trial.

46. Awarding plaintiff reasonable costs for attorney's fees and costs incurred in this action, as provided for in Title 42 of the United States Code, Section 1988.

47. Granting plaintiff such other and further relief as may be just.

DATED this 20th day of May, 1983.

/s/ **JEFFREY T. HALEY,**  
Attorney for Matthew Fraser  
and E.L. Fraser

American Civil Liberties Union  
Of Washington Foundation

**COMPLAINT EXHIBIT A****A Sensual Armageddon**

Johnnie traversed the forboding bedlands in his specially equipped military tank, the F-69. The unique traction treads, developed for the demanding conditions of this particular mission, gently caressed the desert sands. He sped forward, the sheer weight of the mission burdening his mind. Ahead lay the enemy territory, a, so far, untouched land. Basically, Johnnies's mission would take him into enemy land and, by establishing a false sense of security, penetrate and destroy the enemy.

He guided the tank off of the sands of the bedlands and onto the forbidden land. His compass needle pointed south, toward the mountains. He was to climb and explore at least one of the mountains and use the peak as a vantage point to observe conditions to the south.

His treads, specially designed to grip the smooth surface of the almost symmetrical mountain without marring the terrain, traced his path up the first sharp, then steadily decaying slope. At the peak he stopped and let his motor warm up more in preparation for what lay ahead. His return trip took him down the side of the mountain toward the cleavage which formed a pass between the northern shoulder of the land and the barren flatlands to the south.

Once down the mountain through the pass, he raced the tank's engine across the flatlands. Sweat beaded off his forehead. His pulse quickened. His breathing deepened in anticipation. If it was going to happen, it would and soon. He could feel it in the air. Soon it would be over.

His vehicle was almost thrown from its path by the rhythmic, heaving earthquakes created by deep, internal activity beneath the land created by the enemy. This meant that his presence had been detected, but this did not worry him. The enemy, try as it may, could not resist his advances. He had come too far to turn back.

He passed through the citrus groves in the lower, more seismically active area of the lowlands. The thought of, perhaps, stopping for a moment and savoring one of the naval oranges passed through his mind. His mission, however, drove him on.

His treads rested now on the sands of the southern bedlands. The fork peninsula jutted south on either side. Under Johnnie's command at the controls, the tank spun around 180 degrees and faced northward, toward the target area, a weakly camouflaged entrance to the underground enemy bases.

A switch activated the turret motors, raising the enormous cannon in readiness for battle. The F-69 was now the picture of combat readiness with the long, large cannon barrel jutting horizontally forward. A second switch armed the twin shell chambers with the modified charges.

Johnnie's mission was to ram the unprotected entrance with the gun. Once the barrel was completely engulfed in the entrance, the twin shells would fire, starting a chain reaction deep within the womb of the base. Johnnie would, after this glorious day, go down in history as the man who conceived the birth of a war.

—Jim Dempsey

---

**COMPLAINT EXHIBIT B**

**LAW OFFICE OF  
JEFFREY T. HALEY  
500 PIONEER BUILDING  
ONE PIONEER SQUARE  
SEATTLE, WASHINGTON 98104**

**MELVYN J. SIMBURG (206) 623-7007  
OF COUNSEL**

May 3, 1983

**Dr. Bruce Alexander  
Bethel School District No. 403  
516 E 176th  
Spanaway, WA 98387**

**Re: Matt Fraser v. Bethel School District No. 403**

**REQUEST FOR GRIEVANCE REVIEW**

This request for grievance review outlines the claims of Matt Fraser. It does not present a detailed argument. If so requested by the District, Matt Fraser will present oral or written detailed argument that the speech in question is protected by the 1st and 14th Amendments to the United States Constitution and is not, under constitutional legal standards, disruptive or obscene.

**1. *Statement of the Facts***

On April 26, 1983, Matt Fraser delivered a nomination speech for his candidate for Bethel High School ASB vice-president at an all-school assembly. A copy is attached. After the speech, Matt Fraser was notified by the school administration that the speech was objectionable and that he should expect disciplinary action. Mr. Fraser was offered an opportunity to rebut the allegations that the speech was obscene and in violation of a school rule which states:

"Conduct which materially and substantially interferes with the educational process is prohibited including the use of obscene, profane language or gestures."

Mr. Fraser was then informed that he would be suspended from school for three days, effective immediately, and that his name would be removed from the ballot for graduation speaker.

Upon request by Mr. Fraser and notification of his intent to appeal, the school principal allowed Mr. Fraser to return to school after two days suspension and agreed to leave undisturbed Mr. Fraser's eligibility to be graduation speaker until the appeal could be resolved.

During the preceding two years, Mr. Fraser had written a number of editorials in the school newspaper which were critical of members of the school administration.

Approximately one year earlier, another student gave a nomination speech for a candidate for student office that was similar in character to the speech given by Mr. Fraser. That student was not suspended from school. Also during the preceding year, another student published in a student publication an essay of a similar character to Mr. Fraser's speech. This student was also not subjected to suspension or precluded from the possibility of being graduation speaker. In fact, he was the graduation speaker at the end of that year.

## 2. *Grievance Claims*

### a. *Fraser's speech is protected political speech.*

As citizens of the United States, students have rights of free speech even in the school context. Students do not "shed their constitutional rights to freedom of speech or

expression at the schoolhouse gate." *Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969). Under the Constitution, political speech is accorded the highest level of protection. The speech given by Mr. Fraser was a political speech, given in an appropriate time, place, and manner, for the purpose of electing his candidate to student government office. His speech will be given the highest level of protection by the courts.

" . . . conduct by the student, in class or out of it, which for any reason — whether it stems from time, place or type of behavior — materially disrupts classwork or involves substantial disorder or invasion of the rights of others, is, of course, not immunized by the constitutional guarantee of freedom of speech". *Tinker*, cited above. Fraser's speech did not materially disrupt class work or involve substantial disorder. In the context of a political nominating speech, laughter and cheering on the part of the students cannot be considered disorder.

Speech which is obscene under community standards, is not protected by the First Amendment. Under constitutional standards, speech is obscene in the high school context only if it meets each of three tests. First, the average person must find that the speech appeals to the prurient interest of minors. Second, the work must depict, in a patently offensive way, sexual conduct specifically defined by applicable state law. And third, the speech, taken as a whole, must lack serious literary, artistic, political or scientific value. See *Miller v. California*, 413 U.S. 15, (1973). *Ginsberg v. New York*, 390 U.S. 629 (1968).

Although the speech did contain secondary meanings with sexual connotations, the speech did not depict any de-

fined sexual conduct. The sexual secondary meanings were used as a serious rhetorical device for political purposes. Just as adult politicians begin their speeches with a joke to develop a rapport with their audiences, Mr. Fraser used the most popular and common form of humor among students his age to develop such a rapport with his audience. This rhetorical device was used for the political purpose of winning the election for Mr. Fraser's candidate. This purpose was achieved.

b. *Fraser was singled out for punishment.*

The speech given by Mr. Fraser was not more obscene or more explicit than the similar nominating speech delivered one year earlier or the suggestive essay published that year. In contrast to the other two students, Mr. Fraser has been singled out because he has frequently criticized the administration in editorials published in the student newspaper.

3. *Conclusion and Request for Relief.*

Because Mr. Fraser's speech is protected by the First Amendment, he may not be subjected to any punishment or deprivation of privilege as a result of his speech. If school administrators find the speech distasteful, immature, or unwise, their appropriate remedy is more speech. It would be appropriate for them, as educators, to tell Mr. Fraser, and the other students, why they feel that this behavior is distasteful or inappropriate. Through additional speech, they might even criticize, humiliate, or ridicule Mr. Fraser. It is appropriate for them to try to influence Mr. Fraser and the other students through a battle of ideas; but it is not appropriate for them to use the power of their

office to punish Mr. Fraser for exercising his rights of free speech even though his speech may have been distasteful.

Mr. Fraser requests that his rights of free speech be vindicated by a reversal of the decision by school administrators. If the Superintendant overrules the school administrators by concluding that Mr. Fraser's speech did not violate the rule in question, the matter will be settled. If the Superintendant concludes that the speech violated the rule, then the rule is unconstitutional and must be stricken. Any conclusion that Mr. Fraser violated school rules as a result of this speech deprives Mr. Fraser of his civil rights, chills the rights of free speech held by all students, and gives Mr. Fraser a cause of action in the courts.

Respectfully submitted,

Jeffrey T. Haley  
Attorney for Matt Fraser  
American Civil Liberties Union  
of Washington Foundation

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#### SCHOOL ASSEMBLY 4-26-83

I know a man who is firm—he's firm in his pants, he's firm in his shirt, his character is firm—but most of all, his belief in you, the students of Bethel, is firm.

Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts—he drives hard, pushing and pushing until finally—he succeeds.

Jeff is a man who will go to the very end—even the climax, for each and every one of you.

So vote for Jeff for A.S.B. vice-president—he'll never come between you and the best our high school can be.

---

**ANSWER OF DEFENDANTS****(Filed May 27, 1983)**

**COME NOW the Defendants, and for answer to Plaintiffs' Complaint, admit, deny, and allege as follows:**

**I.**

- 1. Defendants admit the allegations of paragraph 1.**
- 2. Defendants admit the allegations of paragraph 2.**
- 3. Defendants admit the allegations of paragraph 3.**
- 4. Concerning paragraph 4 of Plaintiffs' Complaint, Defendants admit only that Plaintiffs allege violations of constitutional provisions and the laws cited, and deny any other allegations.**
- 5. Paragraph 5 calls for a legal conclusion and is not the recitation of facts which Defendants must admit or deny.**
- 6. Defendants admit the allegations in paragraph 6.**
- 7. Defendants admit only that the text of the speech quoted in paragraph 7 is substantially the same as that delivered by Matthew Fraser in a school assembly on April 26, 1983. The remaining allegations of paragraph 7 are Plaintiff Fraser's characterization of his intent and motive in delivering the speech and Defendants deny the same.**
- 8. Concerning paragraph 8 of Plaintiffs' Complaint, Defendants admit that the language of the speech has sexual connotations, but deny the remaining allegations.**
- 9. Defendants deny the allegations of paragraph 9.**

10. Defendants admit the allegations of paragraph 10.

11. Defendants deny the allegations of paragraph 11.

12. Concerning paragraph 12 of Plaintiffs' Complaint, Defendants admit that two (2) other teachers talked with Plaintiff Fraser prior to delivering the speech the remaining allegations are Plaintiff's characterization of these conversations and Defendants' deny the same.

13. Concerning paragraph 13 of Plaintiffs' Complaint, Defendants admit that on April 26, 1983, an all school assembly was convened after the last school class and prior to the end of the school day for the purpose of presenting speeches for the election of student government officials. Defendants further admit only that students were either required to attend the assembly or to attend a study hall. Defendants deny the remaining allegations of paragraph 13.

14. Concerning paragraph 14 of Plaintiffs' Complaint, Defendants admit only that Fraser's speech and Mr. Kuhlman's speech were last on the agenda, and that students were dismissed from school following its conclusion. Defendants deny the remaining allegations of paragraph 14.

15. Concerning paragraph 15 of Plaintiffs' Complaint, Defendants admit only that Mr. Kuhlman, Matthew Fraser's candidate, won his election, and deny the remaining allegations.

16. Defendants admit that Mr. Fraser criticized the administration both orally and in writing. Defendants deny each and every other allegation in paragraph 16.

17. Defendants deny each and every allegation found in paragraph 17.

18. Defendants deny the allegations of paragraph 18.

19. Defendants admit that on the evening of April 26, 1983, the day the speech was given, Bethel Principal Dave Rich telephoned Fraser at home and told him to appear in the morning in his office. Mr. Rich advised Fraser that he should bring his parent(s) as there was the possibility of discipline action. Regarding the remaining allegations, Defendants admit that Fraser was provided with copies of letters from five (5) teachers regarding his speech, but because the remaining allegations of the last two sentences of paragraph 19 are Plaintiffs' characterization of Defendant Ingle's action and the content of the letters, Defendants deny the same.

20. Defendants admit the allegations of the first two sentences of paragraph 20, and deny the remaining allegations.

21. Defendants admit the allegations of paragraph 21.

22. Defendants admit the allegations of paragraph 22.

23. Concerning paragraph 23 of Plaintiffs' Complaint, Defendants admit only that a speech was delivered one year earlier that contained a single sexual reference and that the student was not suspended. Defendants deny the remaining allegations of paragraph 23.

24. Defendants admit that immediately after Ingle announced Fraser's punishment, Fraser indicated that he wished to appeal. Because the Principal, Dave Rich, was

not at the school that day, Ingle stated that either herself or Assistant Principal Morrison were available to hear the appeal. Ms. Ingle suggested to Mr. Fraser that since she had imposed the suspension, he should appeal to Mr. Morrison. Mr. Fraser indicated he would rather appeal to Ms. Ingle. Ingle then denied the appeal, indicating that the suspension would not be stayed pending any further appeal.

25. Defendants admit the first two sentences of paragraph 25, but deny the remaining allegations.

26. Concerning paragraph 26 of Plaintiffs' Complaint, Defendants admit only that Dave Rich granted Fraser's request to stay his suspension and removal of his name from the graduation ballot until the determination of his appeal at the Superintendent's level. Defendants deny each and every other allegation in paragraph 26.

27. Concerning paragraph 27 of Plaintiffs' Complaint, Defendants admit only that some Bethel High School students put up posters and plaque cards concerning Matthew Fraser's suspension, that the posters and plaque cards contained sexual references, and that the students were not subjected to disciplinary action. Defendants deny the remaining allegations of paragraph 27.

28. Defendants admit the allegations of paragraph 28.

29. Defendants admit the allegations of paragraph 29.

30. Defendants admit the first sentence of paragraph 30 of Plaintiffs Complaint. Defendants also admit that a ballot for graduation speaker was distributed to students

without Matthew Fraser's name, the election was conducted, and that Matthew Fraser had requested that no action be taken prior to the conclusion of his law suit. Because the remaining allegations are simply Plaintiffs' characterization of these facts, Defendants deny the same.

31. Concerning paragraph 31 of Plaintiffs' Complaint, Defendants admit only that graduation is set for June 8, 1983, and for Plaintiff's constitutional claims regarding first amendment rights of free expression that further administrative proceedings would be futile. Defendants deny the remaining allegations of paragraph 31.

32. Because paragraph 32 is simply Plaintiffs' characterization of certain legal and societal issues and does not contain allegations of fact, the Defendants deny the same.

33. Defendants deny the allegations of paragraph 33.

34. Defendants deny the allegations of paragraph 34.

35. Defendants deny the allegations of the following paragraphs in their entirety, paragraphs 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47.

## II.

### BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSES, DEFENDANTS ALLEGE:

1. Bethel High School's rule concerning disruptive conduct is constitutionally valid and prohibits disruptive conduct and obscene speech.

2. The speech Matthew Fraser delivered on April 26, 1983, was obscene in violation of Bethel High School's disruptive conduct rule.

3. Plaintiff Fraser's speech also caused a material and substantial interference with the educational process in violation of the disruptive conduct rule.

4. The District's action, three day suspension and removal of Matthew Fraser's name from the list of candidates for graduation speaker, did not violate his constitutional or statutory rights under federal or state law.

5. A short term suspension of three days and excluding Plaintiff from consideration as a graduation speaker are not punishments severe enough to invoke the court's jurisdiction under the Fourteenth Amendment of the United States Constitution.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants respectfully request the court to dismiss the same, enter judgment in favor of Defendants, and award Defendants its costs and disbursements herein and any other relief the court deems just and equitable.

DATED this 27 day of May, 1983.

KANE, VANDEBERG, HARTINGER  
& WALKER

By: /s/ WILLIAM A. COATS, Of  
Attorneys for Defendants

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## EXCERPT FROM REPORTER'S TRANSCRIPT

\* \* \* \*

[Testimony of Irene Hicks]

(p. 27) *Direct Examination*

By Mr. Coats:

Q Would you state your full name, please?

A Irene Susan Hicks.

Q By whom are you employed?

A Bethel School District.

Q How long have you been so employed?

A About ten years.

Q In what capacity?

A Oh, a variety of things, foreign language teacher, English teacher, journalism teacher.

Q Do you have a relationship to the newspaper at the Bethel School District?

A Yes, for the past three years I have been advisor to the newspaper.

Q Do you know Mr. Fraser?

A Yes, I do.

Q Is he one of your students?

A Yes, he is.

Q Have you supervised him on his newspaper activities?

A I have worked with him on the newspaper.

**Q** You are aware that Mr. Fraser has asserted that there has been retaliation for his having written columns for the newspaper, have you seen any evidence of that?

**A** I haven't seen any evidence of retaliation.

(p. 28) **Q** Has he written particularly critical articles about the administration?

**A** Some may interpret them as critical.

**Q** Have other students done that as well?

**A** Oh, yes.

**Q** Have you ever seen any retaliation at Bethel from the administration for those articles?

**A** I haven't.

**Q** Were you present at the assembly on April 26th?

**A** Yes, I was.

**Q** Where was this assembly?

**A** It was in our gymnasium.

**Q** About how many students were there?

**A** Oh, I would say about 600.

**Q** Where were you during the assembly?

**A** It is my duty to sit within the senior section, so I was about halfway up amidst the seniors.

**Q** You heard Mr. Fraser's speech?

**A** Yes, I did.

**Q** What was the student reaction to his speech?

**A** The best way to describe it, I think, is mixed. There were pockets of loud clapping, hoots and hollering

and then there were other students that were sitting there, I guess my best words to describe it is as rather bewildered, not understanding what the kids were clapping (p. 29) about and why there was such a difference in reception to the speech.

Q What was your response to the speech?

A I thought it was very poor. I thought it was inappropriate for a school assembly. I don't like people to talk about male sexual response in front of me or students.

Q Did you have an emotional reaction to it?

A I was — yes, I was displeased by it and I immediately went to the principal and I said, did you — Matt Fraser just gave a dirty speech, was my response to him.

Q Did other students seem to have a similar response?

A The kids were, as I said, some were just kind of bewildered and the others were just saying, yahoo, wonderful, we are all for it, great.

Q What did you do after the assembly?

A Immediately after the assembly I talked to the principal.

Q Who was that?

A Lee Morrison, the principal.

Q What did he do?

A He was very calm. He just listened to me, I think, he kind of calmed me down, because I was a little upset at the time. Then I walked out of the assembly and shortly thereafter he called me into the office where I met with Matt, another teacher who was upset about the speech, (p. 30) the AFP president of the students who was there

and the assistant principal asked Matt to deliver a copy of the speech.

**Q** Was anything else said at that conference?

**A** I believe that the assistant principal asked him to come to school the next morning and be prepared for some sort of disciplinary action.

**Q** You are aware that Mr. Fraser tried out to be a graduation speaker?

**A** Yes.

**Q** Did you have any discussion with him concerning that?

**A** Yes, I did. There is a — do you want me to tell a little about the history of that?

**Q** Go ahead.

**A** There is a graduation committee that sets up the graduation. It is composed of students and the assistant principal. Apparently the kids have to try out to be a graduation speaker before a panel of kids and teachers and when they try out then if their speech is acceptable then they are put on the ballot for graduation speaker. Matt gave a speech that I heard about, because everybody said, boy, you wouldn't believe it, it was so beautiful, it was so nice, it was so saccharine almost in its approval of everything that had happened in the Bethel School District and I was a little bit astounded, (p. 31) because I know Matt as a critical thinker and I thought it was a little bit out of character.

I did mention it to an administrative intern and I believe he took that information to the principal. I did hear

Matt talking to another student in my newspaper class and smiling when the other student said, Matt, that is not really you, is it, and Matt shook his head and he says, no.

Mr. Coats: That is all the questions I have.

*Cross-Examination*

By Mr. Haley:

Q Mrs. Hicks, did you preview Matt Fraser's speech before he delivered it to the students?

A Preview is not the right term, can I explain how I saw it?

Q Did you see Matt Fraser's speech before he delivered it to the students?

A I not only saw it, he read it to me.

Q Did you suggest to Matt Fraser that delivery of the speech might violate a school rule or subject him to punishment?

A I told Matt that his speech was inappropriate and that he probably should not deliver it.

Q Did you suggest to Matt Fraser that the delivery of the (p. 32) speech might violate a school rule or subject him to punishment?

A I wasn't aware that there was a school rule regarding that.

Q Is your answer no?

A Did I suggest to him that he would be breaking a school rule?

Q Yes.

A No, I told him his speech was inappropriate.

Q Is your answer no to my question?

A That is correct.

Q Did you alert the administration that Matt Fraser intended to give the speech?

A No, I didn't.

Q In the meeting with assistant principal Morrison, did assistant principal Morrison want your statement about the speech in writing?

A Yes, he did request that.

Mr. Haley: Thank you, that is all.

*Redirect Examination*

By Mr. Coats:

Q When you reviewed Mr. Fraser's speech, where was that?

A It was in my newspaper production room.

Q What was going on at that time?

(p. 33) A We were one day before deadline. It was approximately ten minutes before the assembly bell and I had several students around me. I was correcting copy, talking to two or three at once. Matt came in and said, do you want to hear the speech that I am going to give to the assembly today and he gave it to me on a crumpled up piece of paper, single spaced and I said, Matt, I don't want to read that, why don't you just read it to me and then he read the speech.

Q Did you find the speech offensive?

A Yes, and I think the students around me did too. There were four or five students around me at that time who heard it.

Q You indicated that you weren't aware of the rules, are you in charge of discipline in the building?

A No, teachers don't suspend students. I feel my job as a teacher is to help them make correct judgments. I don't normally haul kids by the back of the neck down to the office.

Q How long before the assembly did this conversation take place?

A I would guess ten or fifteen minutes.

Mr. Coats: That is all the questions I have.

Mr. Haley: If I may recross.

The Court: Go ahead.

(p. 34) *Recross-Examination*

By Mr. Haley:

Q Are teachers at Bethel High School requested by the administration to enforce school rules?

A Umm hmm.

Mr. Haley: That is all.

The Court: Let me ask a question. This question of prior approval of candidates to be commencement speakers, isn't that a form of censorship, in other words, the teachers that hear it have the absolute say if that person can appear on the ballot whether their speech is appro-

priate or not. Do they have to actually give you the speech that they are going to give at commencement?

The Witness: As I understand it, it is mainly students, there are very few teachers there and I don't know, if that is your definition of censorship that is the way it has been set up.

The Court: You are the one that says, it was either you or you overheard a conversation, was that either you, Matt, who was it other than Matt that gave it?

The Witness: It was out of character for Matt to give that sweet a speech concerning the administration.

The Court: That sweet of speech, how would I (p. 35) characterize that, that sweet of speech, I think you said saccharine.

The Witness: Umm hmm.

The Court: That is sweeter than sugar.

The Witness: A substitute for sugar.

The Court: That sweet of speech, is there some definition that one could that was outside the Bethel School District that could examine such procedures and come up with some reasonable explanation of what you are talking about, or does that mean that someone agreed with him or didn't agree with him.

The Witness: Are you asking me my opinion?

The Court: Yes, what if he got up and made a speech that in his opinion the Bethel School District should be abolished, would that be acceptable.

The Witness: I would say that is probably more in character.

The Court: Or he is different?

The Witness: Umm hmm.

The Court: Any redirect examination based upon the Court's questions.

Mr. Coats: No.

Mr. Haley: No, your Honor.

The Court: All right, you may step down.

Next witness.

(p. 36) GARY W. McCUTCHEON, having been first duly sworn upon oath by the Clerk, testified as follows:

*Direct Examination*

By Mr. Coats:

Q Would you state your full name, please?

A Gary Wayne McCutcheon.

Q By whom are you employed?

A Bethel School District.

Q In what capacity?

A The last year and a half I have been a counselor at Bethel High School.

Q Before that, by whom were you employed?

A In total I have been employed by the Bethel School District for three years and the first year and a half was as a school psychologist.

Q Did you attend the assembly on April 26th?

A I sure did.

Q Did you see and hear Mr. Fraser's speech?

A I surely did.

Q Could you describe the student reaction, please?

Mr. Haley: Your Honor, I object. This is hearsay and irrelevant as to what he saw and the reaction of the students.

Mr. Coats: I am asking what he saw, I don't understand how that is hearsay.

(p. 37) The Court: Does it differ from the last witness.

Mr. Coats: There is going to be some additional information.

The Court: Go ahead.

A (By witness) Would you like what I heard or what I saw?

Q (By Mr. Coats) Let's first go with what did you hear from the student body?

A Not too dissimilar to what Mrs. Hicks just reported, the students were pockets of high volume conversations, hooting, yelling, which is not a typical to a high school auditorium assembly and the auditory, the sounds were not too dissimilar to any auditorium sounds I have heard over the many assemblies I have been at Bethel High School.

Q Were there physical activities as well?

A I think of particular interest might be perhaps was something I hadn't seen before. I had seen one student on the side of the bleachers where I was sitting actually simulate masturbation and two students on the opposite bleachers were simulating the sexual intercourse movement with hips.

Q Can you show us what you mean?

A I prefer not to.

Q I will defer to that, was there any student reaction to (p. 38) all of this other than the ones that were hooting?

A Student reaction to the three cases I mentioned?

Q Some students were hooting and some students were acting out, were all of the students doing that?

A No, one student in the first case and two students in the opposite bleachers in the second case. That is the only three I noticed that were doing anything that was different.

Q Did you note any student reaction to this conduct?

A I think — gee, I can't pinpoint it. I say in general a couple of students around that particular three individuals were getting more aroused volume wise with their voice, I would say.

Q Where were you situated during this?

A In the bleachers, up near the top of the bleachers in one section.

Q Were you free to leave during this assembly?

A I could have either jumped off the bleachers ten feet down and left or crowded down through the students and it would have been quite a feat to get down through the students during an assembly, so yes, I could have done that, but it would have been very hard to do.

Q During the assembly were the students free to leave at any time?

A Students could walk out, if someone wanted to go to the (p. 39) restroom they could walk out and leave, or if there was some other reason where they felt ill or something like that I suppose they could leave. There is nobody at the door saying, stay in.

Mr. Coats: That is all the questions I have.

The Court: Cross-examination.

Mr. Haley: I have no questions.

The Court: Mr. McCutcheon, you referred to something that individual students were doing that you characterized and described their movements, is this unusual for 16, 17 or 18 year old students to be curious about sex?

The Witness: Not at all.

The Court: Do you think that you have the expertise to determine whether 16, 17 or 18 year old students understand masturbation?

The Witness: If anybody has expertise I think that with my experience and my general knowledge I would have.

The Court: Would you agree that different people would have different ideas about that type of thing?

The Witness: You mean whether it is acceptable or condone it.

The Court: Yes, wherever they might want to (p. 40) practice it.

The Witness: I think it is a clear social standard, at least in my mind. I have never seen even students imitate those two behaviors in public on the high school campus.

The Court: Were those students charged by you, sir?

The Witness: What did you want?

The Court: Were they charged by you with any misconduct?

The Witness: No, I have no authority over student conduct other than referring people to the administrator. I can certainly encourage students to do the right thing —

The Court: I know, but did you do that in these situations where you say you had never seen that type of conduct?

The Witness: Did I go up to them and indicate something to them?

The Court: Was the speech the cause of it or was that just a proclivity at that time and place to exhibit or act out that way?

The Witness: I can't think cause, I think cause, people's motivations come from several directions.

The Court: Thank you, I have no further (p. 41) questions.

Redirect?

*Redirect Examination*

By Mr. Coats:

Q You had never seen that activity at any other time at Bethel High School?

A No, I have seen people move their hips like in sexual intercourse to and fro, but not the masturbatory activity.

Q Have you ever seen that conduct at an assembly?

A No, I haven't, as I just said, I haven't seen it.

Q Or that conduct at any organized school activity?

A I have not personally seen it.

Q This occurred during Mr. Frazer's speech?

A It did.

Q Now when you say you can't tell the cause you assume that Mr. Fraser's speech had something to do with this activity?

A Without a doubt. There are motivations and that may have been for those particular three students, I think that was a prompting or fostering of that particular behavior.

Q You have reviewed Mr. Fraser's speech or you heard it?

A Certainly.

Q Was, based on your experience, students of that age (p. 42) suggest sexual activity from the wording that was used in that speech?

A You mean was there a deep message or sexual innuendo in that message, clearly.

Mr. Coats: Thank you.

The Court: Mr. McCutcheon, isn't that sort of in the eyes of the beholder, like beauty, didn't I read something about one of your teachers that is a communications expert and he didn't take it that way?

The Witness: Well, I don't know about expert testimony, I have been teaching psychology for many years and I am a licensed psychologist, but as far as getting into language communication, metameessage, paralanguage, etcetera, purely innuendo means double message —

The Court: Do you know a Mr. Shawn?

The Witness: I certainly do.

The Court: What is his last name?

The Witness: Mr. Madden.

The Court: Mr. Madden says, over all, nothing was said which could be in and of itself offensive, is this true with him?

The Witness: I disagree —

Mr. Coats: I want Mr. Madden to testify about that.

The Court: It is part of the letter in the (p. 43) exhibits.

Mr. Coats: It has not been admitted, it was sent into the Court unilaterally.

The Court: What is the difference?

Mr. Coats: I am going to cross-examine him.

The Court: You can do anything you want, you can call whoever you want. Why can't we, what are we hiding?

Mr. Coats: I am not trying to hide anything.

The Court: The nature of the TRO in the declaratory judgment you put everything in the affidavit and supporting documents. If you read the rule the Court is to consider them.

Mr. Coats: I called the Court's clerk and I asked her if you do this and that —

The Court: I don't care who you called, counsel, I am telling you what the rules are and if you want to call Court clerks that is your problem and I merely asked Mr. McCutcheon if he agreed with Mr. Madden. Do you sir?

The Witness: No, I don't.

The Court: That is the answer, he doesn't agree with him. Any other questions.

Mr. Haley: No, your Honor.

The Court: All right, you are excused. Next?

(p. 44) Mr. Coats: I call Debbie Carmandi.

DEBBIE L. CARMANDI, having been first duly sworn upon oath by the Clerk, testified as follows:

*Direct Examination*

By Mr. Coats:

Q Would you state your full name, please?

A Debbie Laurie Carmandi.

Q By whom are you employed?

A Bethel School District.

Q In what capacity?

A Home Ec teacher.

Q How long have you had that position?

A Six years.

Q Were you at the assembly on April 26th?

A No.

Q When was the first time you heard about the speech?

A The next day in my first period class.

Q What was the context of your hearing about it?

A I was trying to teach my class and they were chatting away and so finally I decided, okay, what is the deal here, what is going on and they started telling me. They said, were you at the assembly yesterday and I said no and they said, you didn't hear about Fraser's speech and I said, no, so they started telling me about it.

Q You started teaching a class not knowing about this (p. 45) speech?

A No.

Q How long did you teach the class?

A Probably, I don't know, about ten minutes or so. I guess.

Q Can you explain to the Court why you stopped the class to discuss the speech?

A Because they weren't paying attention to me.

Q Why?

A Because they were chatting about the speech.

Q What did you do when you found that out?

A When I found — wait a minute —

Q That they were talking about the speech?

A I stopped and I said, I don't understand, what is going on, so they started telling me about the speech, you know, what had happened at the assembly and they were talking about it, you know, just that.

Q How long did they stay?

A Well, okay, probably I don't know, five or seven minutes and then I tried to go back to teaching. I said, okay, well whatever and started to try to teach again and they weren't ready to quit yet. So then we probably talked about it for a couple more minutes and they wanted to know what was going to happen and I said, I don't know, I didn't even hear the speech. So then after about two or three more minutes we went back.

(p. 46) Q Did this impact your classes the rest of the day?

A Umm hmm.

Q In what respect?

A Well, all of the kids were talking about it all day long and as the day continued, of course, you know, everyone was talking during classes and in between classes and stuff as the day went on. They just talked more and more

about it and it just seemed like by fifth period that is all they were talking about.

Mr. Coats: That is all the questions I have.

The Court: Cross-examination.

*Cross-Examination*

By Mr. Haley:

Q Mrs. Carmandi, are teachers responsible for maintaining order in the classroom?

A Umm hmm.

Mr. Haley: That is all I have.

Mr. Coats: I have no further questions.

The Court: You may be excused. Call your next witness.

Mr. Coats: I will call Matt Fraser. Has a copy of his speech been admitted.

The Court: I have considered it if you are offering it, it is the same thing. I have read it.

(p. 47) MATT FRASER, having been first duly sworn upon oath by the Clerk, testified as follows:

Mr. Haley: I think, counsel, we will stipulate that both the text stated in the complaint and the text stated in the defendant's brief are completely correct.

The Court: Go ahead.

*Direct Examination*

By Mr. Coats:

Q First of all, state your full name, please?

A Matthew Neil Fraser.

Q You are a student?

A Correct.

Q What year are you, Matt?

A I am a senior now.

Q How old are you?

A Seventeen years old.

Q You gave a speech on April 26th, 1983 to the assembly?

A Correct.

Q We have agreed that that has been admitted in evidence. What was the purpose of the speech?

A The purpose of the speech when I wrote it was to amuse the audience and hopefully to establish a rapport with the audience so that I could get my candidate elected.

Q It was a nominating speech for a candidate?

(p. 48) A Correct.

Q You start off in the speech and you say, "I know a man who is firm, he is firm in his pants." What were you trying to convey when you said he was firm in his pants?

A Well, it goes along with the rest of the sentence in context. The first meaning, I agree there is a secondary

meaning there, the first meaning and the one that everybody was supposed to get was that I was supporting this character saying he was firm in his pants, he was firm in his shirt and his character was firm and overall he would be very firm for the students at Bethel.

Q What I want to know is that you say, he is firm in his pants, what does that have to do with this particular political belief of this particular candidate, how does that add to the sentence?

A In the same way that he is firm in his shirt does, it supports it by using metaphors, I believe and it supports it by saying overall, you know, he is firm throughout and he would go for the students and do what needed to be done.

Q When you say he is firm in his shirt, what does that have to do with it?

A It is just using an example to show, you know, how he is firm, how to give the audience a picture and hopefully they will pick up on it and they will say, you got it.

(p. 49) Q You deliberately used sexual innuendoes in this speech, did you not?

A Yes.

Q You anticipated that when you gave this speech that the audience would perceive the sexual innuendoes, did you not?

A I expected that some people would pick it up, yeah.

Q Did you discuss it with any students before the assembly?

A Yes.

**Q** What students did you discuss it with?

**A** I discussed it with several students. I discussed it with the candidate who I was giving the speech for, Jeff Kuhlman, one of the opposing candidates, Jeff Upchurch and I discussed it with my debate partner as we were walking on our to the assembly, Nockie Taylor, and there might be some others, I can't recall at this point.

**Mr. Coats:** Judge, what I have is a tape of his speech that was given that I think we have agreed as to its authenticity, that was recorded by a student, if I could play that, would you agree, counsel?

**Mr. Haley:** Counsel for plaintiff has no objection to playing the tape recording.

**Tape Recording:** (Played by Mr. Coats) "I know a man who is firm — he's firm in his pants, he's firm in his shirt, his character is firm — but most of (p. 50) all, his belief in you, the students of Bethel, is firm.

"Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts — he drives hard, pushing and pushing until finally — he succeeds.

"Jeff is a man who will go to the very end—even the climax, for each and every one of you.

"So vote for Jeff for A.S.B. vice-president—he'll never come between you and the best our high school can be."

**Q** (By Mr. Coats) Now, I noticed when that was given before you say, "I know a man who is firm," that a bunch of people started to yell seemingly in anticipation of your speech, had you discussed it with them?

A Oh, no, I didn't discuss it with a large number of students. That was simply the attitude of the whole assembly was, you know, somebody gets up to speak they yell, yay, and some people were yelling, I heard on the tape, speak, speak, that was the ones who seemed very loud and boisterous and they wanted to hear me give a speech. They knew nothing about what kind of a speech it was.

Q A number of students knew that you were going to give this speech?

(p. 51) A About four or five.

Q Did you review this speech with Mr. DeHart?

A Mr. Steve DeHart, yes.

Q Did Mr. DeHart tell you that you might be suspended for giving the speech?

A No.

Q Did he tell you it was inappropriate?

A No.

Mr. Coats: That is all the questions I have.

#### *Cross-Examination*

By Mr. Haley:

Q Matthew, you said that you attend Bethel High School, have you achieved any academic honors at Bethel High School?

A Yes.

Q Can you mention a few of those?

A I am a member of the Honor Society. I received top speaker in the State in debate two years in a row. I won a leadership contest in the school.

Q Were you aware of any similar speeches to yours that were given previously?

A Yes, there was a speech that had been given the previous year by a student named Rick Renau and it used sexual innuendo and I was aware of that speech and to the best (p. 52) of my knowledge he had not been punished.

Q What did your knowledge of his speech suggest to you regarding the propriety of your speech?

A I even thought about it before I gave the speech and one of the key things in my deciding to go ahead and give it was that a student had given a speech in which he had used four letter words and he hadn't been punished. He had simply, you know, been called to the office and said, gosh, that wasn't too neat and I decided that there was nothing wrong with my speech and there was no patent words in it, so I was going to go ahead and give it, because he hadn't been punished.

Q We have learned so far that two teachers previewed your speech, Mrs. Hicks and Mr. DeHart, did any other teachers preview your speech before you gave it to the assembly?

A Shawn Madden did.

Q Did any of them demand that you not give the speech?

A No.

Q Did any of them suggest that it might be a violation of the school rules?

A No.

Q Who conducted the assembly at which you gave your speech?

A Matthew Taylor.

Q Did he have any difficulty maintaining order?

(p. 53) A No.

Q What happened after your speech?

A After my speech I went to sit down and my candidate got up and he spoke.

Q Was there any substantial delay between your speech and the following speech?

A No, it was about five or ten seconds, the same as every other speech where you walk and sit down and the other candidate comes up.

Q Were you or was anyone at the assembly or soon thereafter accosted or assaulted?

A No, not to the best of my knowledge.

Q Following your speech, did anyone ask you for a copy of it?

A Yes.

Q Who was that?

A Lee Morrison.

Q Did your candidate win the election?

A Yes.

Q Have you, during the last two years criticized the administration?

A Yes.

Q In what form?

A Well, I have done it through editorials in the newspaper, but I have also done it verbally. I have done it

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**TESTIMONY OF MATT FRASER (Continued)**

(p. 58) Q (By Mr. Haley) Matt, how many letters were you given?

A Five that morning.

Q Did any of these letters accuse you of disrupting the assembly or causing other students to disrupt the assembly?

A No.

Q Did any of these letters accuse you of causing disruption the following day?

A No.

Q By giving your speech?

A No.

Q Were you allowed to respond to the charges contained in the letters?

A Yes.

Q What punishment was then imposed?

A I was suspended for three days effective immediately and I was told that my name would be removed from the graduation speaker ballot.

Q Did you then leave the school?

A Yes.

Q When you were being considered for a graduation speaker were you given a graduation speaker application form?

A Yes.

**Mr. Haley:** I believe you have a copy, your (p. 59) Honor and I gave a copy to opposing counsel.

Can we stipulate, counsel, that this is a genuine copy of the graduation speaker application form?

**Mr. Coats:** Yes.

**Mr. Haley:** Thank you.

**Q (By Mr. Haley)** Are the criteria stated in this form the criteria that were used for selecting graduation speakers?

**A** I can't see the form that you are holding, but yes, there was a graduation form that stipulates the three different criteria.

**Q** Were you approved as graduation speaker under these criteria?

**A** Yes, I was approved to be on the ballot to be a graduation speaker.

**Q** By whom were you approved?

**A** There was a selection committee and they said it was okay.

**Q** When did they tell you that you were approved?

**A** They didn't signify to any individual. I was told by Mr. Rich and Mrs. Christie Engle and Mr. Rich called me in for a conference on the morning of the 26th.

**Q** Was that the same day that you then gave your speech?

**A** Yes, about three hours earlier and they told me that they had reviewed my history and I would be allowed to (p. 60) be on the ballot for graduation speaker.

Q How many days of school did you miss?

A Two days.

Q How does the suspension affect your role in the Honor Society?

A I have been informed by the advisor that if the suspension is upheld in court that I will be removed from the Honor Society.

Q Has the suspension and the thought of being kicked out of the Honor Society and the thought of not being allowed to speak at graduation caused you any mental anguish?

A Yes, some.

Mr. Haley: That is all I have.

The Court: Any redirect?

*Redirect Examination*

By Mr. Coats:

Q At the try outs for graduation speaker, did you give the speech that you intended to give at graduation?

A No.

Q You said that there was a conference in the principal's office the morning of the 26th before the assembly?

A Correct.

Q It was about the graduation speech?

(p. 61) A Right.

Q Who was present at that conference?

A Christie Engle and Dave Rich.

Q What was said?

A Well they told me that they were concerned about whether or not I should be allowed to be on the ballot for graduation speaker. They said that they had heard from a source or two, I am not sure whether they said various sources or not, but they said that they had heard from at least one source that it was possible that I would not give that same graduation speech at graduation and I informed them that was correct, that I would not give that same speech and I told them whatever I would give at graduation would be appropriate for the occasion, although it was not the same speech and they said, that was acceptable and I would be allowed to go on the ballot.

Q Did you believe your speech at the assembly was appropriate, the April 26th assembly?

A I think it was appropriate for a political assembly.

Q You indicated that for the last two years you have been critical of the administration in both a column in the newspaper and verbally, is that correct?

A That is correct.

Q During that time have you ever been disciplined or otherwise adversely affected by the administration?

(p. 62) A No, I have been called in for conferences, one conference in particular, but I haven't been disciplined.

Q What conference was that?

A I had one with Mr. Lee Morrison after there was a matter concerning whether or not there had been a misappropriation of \$50.00 from Associated Student Body

funds or something for which the school should not be paying, which was to paint the local bridge with a Bethel insignia and I had accused him both in the newspaper and in front of several students. I produced a document with his signature on it to show that it was to buy the paint to be used to paint the bridge, so he called me in for a conference and talked about the situation.

Q When did that occur?

A Sometime last year towards the end of the year.

Q Do you recall, was Mr. Morrison critical of you over that?

A I don't know one way or the other.

Q Did you ever ask Mr. Morrison for a recommendation?

A I did.

Q Why did you ask Mr. Morrison?

A Because I had been talking to him about application processing and he informed me he would be able to give me a favorable recommendation, so I said, good.

Q To your knowledge, did he in fact write a favorable (p. 63) recommendation?

A I didn't see the recommendation that he wrote. I saw one this morning and that could be the recommendation that he wrote, which I would consider to be favorable.

Q Do you have any instances where Mr. Morrison has retaliated against you for any of these articles or any of the talks that you have given?

A Retaliated, no.

**Q** Any instances where Ms. Engle has retaliated against you or disciplined you for any of your newspaper articles?

**A** No.

**Q** What about Mr. Rich?

**A** No, I would say up to this incident.

**Q** Up to this incident?

**A** Right.

**Q** You indicated that you had a conference with Ms. Engle over the disciplinary action that took place?

**A** Correct.

**Q** In fact, she imposed the discipline?

**A** Correct.

**Q** I want to hand you a document, which purports to be a disciplinary notice, can you identify that for me, please?

**A** That is the discipline form that was given to me.

**Q** I have had this marked as Exhibit A and that is in fact (p. 64) the disciplinary notice that was given to you?

**A** That is correct.

**Mr. Coats:** I move for the admission of Exhibit A.

**Mr. Haley:** No objection.

**The Court:** Admitted.

(Defendant's Exhibit A admitted into evidence)

**Q** (By Mr. Coats) In fact it is disruptive behavior?

A It says that on it, yes.

Q Now after Ms. Engle's conference you were aware that you had to appeal to a district administrator, to the Central Office Administrator?

A Well, there was two different appeals. I appealed immediately, I wanted to know who in the building to appeal to, so Mrs. Engle told me the principal wasn't in, so I appealed to her.

Q You had a choice of appealing to her or Mr. Morrison?

A I was not informed of that choice.

Q Did you have the choice of waiting for Mr. Rich?

A I wanted to appeal immediately so I could get back into school that day.

Q Subsequently did you have an appeal to Mr. Alexander, the District Administrator?

A That is correct.

(p. 65) Q You had this notice indicating disruptive behavior at that time?

A That is correct.

Q I am handing you what has been marked as Exhibit B and I ask you to identify that for me, please?

A That is the school handbook which describes the procedures of the school.

Q Had you been given a copy of that?

A I hadn't in the past, but I did ask for one upon being disciplined.

Q Did you receive it?

A Yes.

Q Is that generally available in the school?

A Yes.

Mr. Coats: I move for the admission of Exhibit B.

Mr. Haley: Counsel for the plaintiff does not object.

The Court: Admitted.

(Defendant's Exhibit B admitted into evidence)

Mr. Coats: I have no further questions.

Mr. Haley: I have nothing further.

The Court: Mr. Fraser, were you subsequently elected by the student body to be a commencement speaker?

(p. 66) The Witness: Yes.

The Court: When was that?

The Witness: The date escapes me, it was in the last week and a half, two weeks.

The Court: Do you know, counsel?

Mr. Haley: Yes, it was May the 19th.

The Court: Any objection to that, May 19th?

Mr. Coats: I don't know the date. That is close enough.

The Court: Any questions you want to propound to this witness, Mr. Coats.

Mr. Coats: No, your Honor.

**Mr. Haley:** No, your Honor.

**The Court:** You may step down. Anything further?

**Mr. Coats:** Yes, Steve DeHart, please.

**STEVEN DeHART**, having been first duly sworn upon oath by the Clerk, testified as follows:

*Direct Examination*

By Mr. Coats:

**Q** State your full name, please?

**A** Steven Darryl DeHart.

**Q** By whom are you employed?

**A** Bethel School District.

**Q** In what capacity?

(p. 67) **A** Social Studies teacher.

**Q** Do you know Matt Fraser?

**A** Very well.

**Q** Did he preview his speech that he gave on April 26th with you?

**A** Yes, he did.

**Q** What was the context of that?

**A** He came into my room ten to fifteen minutes before the assembly. At that particular point I was helping another student who had been having trouble in class. He asked if I would like to hear his speech and I said I would. I excused myself from the student I was helping and then he read his planned speech to me.

Q What was your response?

A My response at that time was that I told Matt that this would indeed cause problems in that it would raise eyebrows.

Q Did you say anything else?

A I told him, or at least as I thought, I was trying to describe to him that there would probably be negative consequences.

Q Did you describe any of those negative consequences?

A Not in detail. I thought that I implied that there might be severe consequences, but more so, I think, I was thinking in terms to his last few weeks as a senior (p. 68) at Bethel High School.

Q Did you mention a suspension to him?

A I think that I thought I implied that I did, but I did not use it in so many words, no.

Q Could you explain what you said to imply it?

A Well, I think by saying that it could cause problems and raise eyebrows I also realized that the speech was indeed ambiguous, could be interpreted a number of ways, so rather than debate with Matt on morality profanity in it I thought it might be best to just point out or at least try to reason that it could indeed cause problems as far as his remaining few weeks at the school. I did not know what the consequences could be.

Mr. Coats: That is all the questions I have.

The Court: Cross-examination?

*Cross-Examination*

By Mr. Haley:

Q Mr. DeHart, did you state to Matt Fraser that delivery of the speech might violate a school rule or subject him to punishment?

A No, I did not.

Q Did you alert the administration that Matt Fraser intended to give this speech?

A No, I did not.

(p. 69) Q Following the delivery of the speech did you hear assistant principal Morrison make any comments about the speech or Matt Fraser?

A Well, concerning Matt first. After the assembly Matt returned to my room. At that point he told me that he had delivered the speech, but that he believed that he was in trouble. The reason for that is that he had been stopped in the hall and I think escorted or he had gone by his own free will to the office and there he had gone through a preliminary hearing or he had been confronted with those teachers who had found it to be offensive.

Later on that evening around 6:00 o'clock in the evening I received a phone call from our assistant principal Lee Morrison concerning what our conversation, Matt's conversation and mine, had been preceding the speech as well as afterward.

Q Did assistant principal Morrison make any comments to you following the speech which suggested that Matt Fraser should not be allowed to get away with this one?

A He said at the end of our conversation that the behavior was inappropriate and they could not let this go. As far as directed toward Matt Fraser, no. In other words, it was in not some sort of indicitive type of response, no.

Q Did assistant principal Morrison ask you to prepare a (p. 70) statement regarding your discussion of the speech with Matt Fraser?

A Yes, he did and to have it ready the next morning.

Mr. Haley: Thank you, that is all I have.

The Court: Redirect examination?

Mr. Coats: I have no questions.

The Court: You may step down. Your next witness.

Mr. Coats: We will call Mrs. Ingle.

The Court: The clerk reminds me we should take a break, we will take a ten minute recess.

(Recess)

The Court: Be seated, please. Your next witness.

Mr. Coats: Mrs. Ingle, please.

CHRISTIE INGLE, having been first duly sworn upon oath by the Clerk, testified as follows:

*Direct Examination*

By Mr. Coats:

Q Would you state your name, please?

A Christie Blair Ingle.

Q By whom are you employed?

A The Bethel School District.

Q In what capacity?

(p. 71) A Assistant principal of Bethel High School.

Q How long have you held that position?

A About four and a half years.

Q How long have you been involved in education overall?

A Eleven years, I think.

Q Do you know Matt Fraser?

A Yes, I do. Not well, not personally, but I know him.

Q Prior to April 26th the day of this assembly how many contacts did you have with Mr. Fraser?

A Prior to that date the only one that I can really remember is that he was a candidate for student body treasurer last year and our student body treasurer is elected by an interview team and I was a member of that interview team.

Q Had you had any disciplinary actions with him?

A No.

Q Did you attend the assembly on April 26th?

A No, I did not.

Q When is the first that you learned about Matt Fraser's speech at that assembly?

A About a half hour following the assembly. I had been out in the building walking around checking on things

and when I returned to the office that he had given a speech and from the information we had at this point it was inappropriate and disruptive.

(p. 72) Q When he came back to the office who advised you of the speech?

A I believe it was Mr. Rich.

Q Who is Mr. Rich?

A Mr. Rich is the principal of the high school.

Q Do you recall what Mr. Rich said to you?

A I am sorry, I don't remember his exact words. I just remember that he said something about the speech and that Mr. Rich was going to be out of town the next day, so he would not be able to deal with a disciplinary matter and he and Mr. Morrison and I sat down together and Mr. Rich said we don't have all the facts, but between now and tomorrow morning when Matt comes in with his parents he kind of charged me with trying to, and Mr. Morrison, to get as many of the facts that we could so we could find out exactly what had occurred.

Q What did you do then to gain these facts?

A Mr. Morrison and I talked with a variety of people. That afternoon I talked with Mrs. Hicks, I believe and I don't remember if I talked with anybody else that afternoon. Mr. McCutcheon I talked with that afternoon.

The next morning I listened to a conversation between Mr. Morrison and Mr. Madden, I don't believe I entered into the conversation. I talked with Mr. Ken Salmons, a teacher. I talked with Mr. Steve DeHart and (p. 73) with Mrs. Tona Nape.

Q Were these teachers—

A These are all teachers who were at the assembly or who had some knowledge of the speech.

Q Did you meet with Mr. Fraser?

A Yes, I did.

Q When did that take place?

A To the best of my recollection approximately 7:30. Mr. Rich had told me that he had told Matt to come into the office before school and bring his parents and as soon as I got to work that morning I had been busy trying to talk to various staff members and I remember particularly looking at the clock and seeing it was 7:15 and I rushed over to the office, they have these windows that you can look into the main office from the hall to see if Matt and his parents were sitting out in the office and they were not and then the tardy bell rang at 7:20 and he still wasn't there and about 7:25 I saw him down the hall and he had not reported to the office, so I sent for him and he came to the office.

Q Who was present when you met with him?

A Mr. Morrison was there.

Q Where did the meeting take place?

A In my office.

Q What was discussed at that meeting?

(p. 74) A Well, Matt came into the office and I don't honestly recall saying anything to him. I may have, but he immediately began to talk about his speech and to defend his speech. He told me that he thought it was appro-

priate, that it was not obscene, that if there was anything inappropriate about it that was the fault of listeners, not his fault. He told me that he had been contacted with an attorney and he had been advised by his attorney that his speech was not inappropriate and not obscene and that it would be inappropriate for me to suspend him according to his attorney.

Q What was your response?

A I told that I believed that the speech, based on the information that I had that I believe his speech was inappropriate and he produced a copy of the speech at that time and I read the speech.

Q Did you discuss it further with him?

A He asked me—well, first of all, he said before we got into a discussion about the speech, I understand that some teachers are making statements about me, I would like copies of those statements, could I have copies of them and I said absolutely, you certainly can and I believe it was Mr. Morrison then that took the copies of those statements and had copies made for Matt.

Then I assume, I usually do, but I can't swear to (p. 75) it, I asked him, I asked him, you know, if he had anything more to say about the speech and his information that he wanted to share with me about the speech seemed to be exhausted and I said, Matt, I am going to suspend you then for disruptive behavior and he asked me what is disruptive and I said, well, my understanding from everybody I talked to is that you gave a speech that the students were hooting and hollering and there is no question in my mind and in the minds of the people who were there that the speech was obscene. It doesn't make any sense if it

is in any other way, it doesn't make sense in support of a candidate, it doesn't make sense unless you take it in a sexual context.

Q That was the disruptive conduct that you discussed with him?

A To that extent it was, yes.

Q You prepared, handing you what has been marked as Exhibit A, in fact you delivered that notice to him indicating disruptive behavior?

A Yes, I did.

Q Referring you to what is Exhibit B, can you indicate on what page the rule is that you feel is violated?

A On page eight, District Offenses, disruptive behavior, conduct which materially and substantially interferes with the educational process is prohibited, including (p. 76) the use of obscene, profane language and gestures and on page ten there is another paragraph about disruption. "Disruption of the educational process will not be permitted. The educational process is defined as all activities carried out during the school day and any special educational program authorized by the district either during the day or at some other time is the responsibility of the principal or the designee to determine whether or not it is a disruption in any given situation."

Q In determining disruptive conduct at a political assembly like this, sometimes the students yell out and say, speech, speech and other things when people are speaking?

A Umm hmm.

Q How did Matt Fraser's speech vary from the usual?

A My interpretation of this particular rule is that it says very specifically that obscene and profane language and gestures is inappropriate in our school. That is one aspect of it. The other aspect is that the speech as we heard on the tape was at a particular point which sexual references were made. The students were hollering to the point where the other parts of the speech, his voice faded out and you couldn't hear them.

Q You had indicated that you found the speech to be obscene and profane and yet there are no four letter words (p. 77) in the speech, why did you find it obscene and profane?

A Because the whole context of the speech suggests male sexual acts.

Q Has Matt Fraser written any columns in the newspaper or are you aware of any talks he has given or discussions he has had where he has been critical of you?

A I can't honestly remember that he used my name in the newspaper, but he may very well have. I don't know of any talks he has given. I don't have a lot of involvement with student government and that is one area where he has given his more critical talks.

Q Did his criticism of the administration or his prior newspaper articles or discussions have anything to do with your decision in this matter?

A No.

Q There has been reference to a student essay last year that they are saying was obscene, were you aware of that essay?

A I have not read the Pentason (phonetic). That is the booklet that that particular essay appeared in.

Q What is the Pentason?

A It is a literary magazine that is published by our students.

Q There was reference to another speech last year that had a four letter word in it, were you aware of that?

(p. 78) A When it was brought to my attention I had a vague recollection of the incident occurring. I was not involved in the discipline, but I had a recollection of a meeting with the youngster's parents and Mr. Morrison, I believe.

Q In implementing the disciplinary action did you attempt to follow the usual guidelines and procedures of Bethel High School?

A Yes, absolutely.

Q Are you in charge of selecting the graduation speakers or the process for doing that?

A Yes.

Q What is that process?

A We have a graduation committee and to some extent it was the prerogative of the students, there are 14 students on the graduation committee. To determine the selection process the students had a choice of either forming a selection committee that in itself would select the graduation speaker or forming a screening committee which would hear the speeches the students proposed to give at graduation and then put the names before the entire senior class to vote those speakers they thought would be appropriate for graduation.

The reason for that process of having some sort of screening process was that in a couple of occasions in (p. 79) the past several years ago speeches were given at graduation which we didn't feel showed the students giving the speech to their best advantage or Bethel High School to its best advantage and we have a real concern that the students at graduation have a ceremony that they and their parents are proud of and can remember through the rest of their lives with pride, so we do have the screening process for the selection of the speakers.

This year's graduation committee chose to act as a screening committee and then to put the name before the students for voting.

Q Did Matt Fraser participate in this process?

A Yes, he did.

Q Was he on the initial list?

A Yes.

Q When the actual election was held he was stricken from the ballot?

A Yes.

Q What was the result of the election?

A I can't remember the exact numbers, but the student who received the most votes, I believe, it is 35 votes and Matt Fraser received 31 write in votes.

Q How many students are in the senior class?

A They were going to graduate 270.

Mr. Coats: I have no further questions.

(p. 80) The Court: Cross-examination.

*Cross-Examination*

By Mr. Haley:

Q Mrs. Ingle, how many graduation speakers were to be selected on the ballot taken May 19th?

A Three.

Q Were those three to be the three students who received the highest number of votes?

A Yes.

Q In the write in votes did Matt Fraser receive the second highest number of votes?

A Yes, he did.

Mr. Haley: Thank you, that is all I have.

The Court: Any redirect, counsel.

Mr. Coats: No.

The Court: Ms. Ingle, calling your attention to Defendant's Exhibit B, I think you have it in your possession, the rules of Bethel School District?

A Yes.

Q Can you point to the rule in there that authorizes you, or did you take the plaintiff's name off the ballot, or did Mr. Morrison do it?

A I believe that Mr. Rich would be the person who did it.

Q You were the person that imposed discipline didn't you?

(p. 81) A Yes, I did.

Q You didn't take his name off the ballot?

A It was a decision just as the discipline was a decision that we reached in conference. The decision to remove the name from the ballot was the decision that we made.

Q In relation to the time that you said that you suspended him for three days?

A Yes.

Q In relation to that time, do you recall that?

A Yes.

Q When was his name taken off the ballot?

A Well, I had my secretary to type up the ballot I believe on May 18th, I am not positive of the date and at that time I told her that she was to type it up without his name on the ballot.

Q Where in the rules of the Bethel School District, Defendant's B, that authorized that additional punishment?

A I beg your pardon, sir?

Q Where in Defendant's B, which are the disciplinary rules of the Bethel School District, is the section that authorizes the subsequent or additional punishment after the suspension?

A There is nothing in the student handbook that speaks to specific punishment other than it says, I can't remember, (p. 82) but in the student handbook the references to punishment say up to and including suspension and expulsion.

Q That is what I am trying to find, is there something in those rules that authorized the committee, which included yourself, to go beyond the suspension and take his name off of the ballot, isn't that punishment?

A Yes, we believe it is our prerogative to do that, just as it is our prerogative to call a parent conference, to assign a student to detention, to assign a student to picking up litter around the school building.

The Court: You answered the question, any further questions?

Mr. Coats: I have no further questions.

Mr. Haley: Yes, I have another question.

Q (By Mr. Haley) You say the decision for discipline was made in a conference with Mr. Rich and Mr. Morrison, is that correct?

A Yes.

Q Did that conference take place before you gave Matt Fraser copies of the five letters?

A The parameters that I might consider when imposing discipline took place, yes, on the 26th.

Q So your answer is yes?

A Yes.

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## TESTIMONY OF LEE MORRISON

*Cross-Examination by Mr. Haley*

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(p. 92) Q Do you ever, as a representative of the administration, act as the voice of the administration in disciplining seniors?

A That could happen. If I am the only administrator in the building or if I happened to deal with a student who was involved in some kind of an act and Mrs. Ingle was not there, it is something that needs to be dealt with immediately, yes, I would on occasion deal with a senior.

Q So you are saying that the only reason it was switched from yourself to Mrs. Ingle who acted on behalf of the administration in carrying out the plans of the disciplinary action was simply because she is the person who deals with seniors?

A No, Mr. Rich told her to and she is the person who normally deals with seniors, yes.

Mr. Haley: I have no further questions.

The Court: Any redirect?

Mr. Coats: I have no further questions.

The Court: Mr. Morrison, is the word (p. 93) inappropriate synonymous with disruptive to you?

The Witness: In regards to the school?

The Court: Yes.

The Witness: Yes, it is.

The Court: So they mean the same thing to you?

The Witness: No, it is synonymous with the school.

The Court: No, I have heard all morning the inappropriate, does that come out disruptive to you?

The Witness: Not necessarily.

The Court: How about non-conforming, is that disruptive?

The Witness: No, not necessarily.

The Court: How can a lay person or an outside person tell what is disruptive at Bethel High School?

The Witness: We don't expect them to.

The Court: That is the answer you gave. Any further questions?

Mr. Haley: No, your Honor.

Mr. Coats: Wait a second, I have a further question.

*Redirect Examination*

By Mr. Coats:

Q In determining disruptive behavior in your view, do the (p. 94) students understand what that conduct is at Bethel High School?

A Based upon the student handbook I would believe that they would, yes.

Mr. Coats: I have no further questions.

The Court: You may be excused.

Mr. Coats: I will call

RANDETTA STEWART, having been first duly sworn upon oath by the Clerk, testified as follows:

*Direct Examination*

By Mr. Coats:

Q Would you state your name, please?

A Randetta Delancey Stewart.

Q Would you spell your last name, please?

A S-t-e-w-a-r-t.

Q By whom are you employed?

A The Tacoma Public Schools.

Q For how long have you been employed by Tacoma Public Schools?

A A little over three years.

Q In what capacity are you employed?

A Assistant Superintendent of Schools.

Q What are your duties as Assistant Superintendent?

A They are various. The scope of my responsibilities cover community affairs, contract appliance, affirmative (p. 95) action, special harassment, Title 9, which is sex equity, Title 4, race desegregation.

Q By whom were you employed prior to coming to Tacoma?

A The Evergreen State College at Olympia. Prior to that I was a faculty member at Central Washington State College at Ellensburg.

Q Did you have counseling duties when you were at Central Washington University?

A I did.

Q What type of counseling duties did you have at Central Washington University?

A Personal counseling with students.

Q For how long did you have those duties?

A Probably for about nine years.

Q What is your training for that type of activity?

A I have a degree in Human Relations and Psychology.

Q Do you have involvement with the sex equity and Title 9 program in Tacoma Public Schools?

A Yes, I do.

Q What is that involvement?

A That involves insuring that girls and boys are treated with equity in all phases of our educational system in terms of what is being taught in our classrooms.

Q I asked you to review a speech, a written copy of a speech given by Matt Fraser, did you do that?

(p. 96) A Yes, I did.

Q I explained to you that that speech was given at an assembly in Bethel School District?

A That is correct.

Q Where high school students were present?

A Correct.

Q When you reviewed this speech did you draw any conclusions from it?

A I did.

Q What conclusions did you draw?

A There were several. One, I felt that it had sexual innuendo. It was double talk. I felt that it was sexually harrassing for me as a female and possibly the same for a male. I felt that it was a put down to our female students and in the innuendo and that I felt came from the speech, women could feel as if they were being put down or spoken to in terms of a sexual object.

Q In terms of sexual harassment, why did you conclude that it was sexual harassing?

A In my opinion this kind of thing serves to disrupt students in a way of which the whole learning process is interrupted and I feel that it is the responsibility within the school district to insure that the environment is free of this kind of thing whereby students are able to learn at their highest level of productivity.

(p. 97) Q How would you anticipate that the learning process would be interrupted?

A Well, if you hear this, after hearing this and discussion takes place I think it detracts from whatever is being taught in the classroom. Rather than go to a class to hear and learn what is being taught this could certainly be a point of discussion and I think it would also put students off his person.

Q Why would it put them off his person?

A I think it invades sin as persons, it invades their being, I guess that is the best way I can put it.

Q You indicated it was a put down to women, how do you think it is a put down to women?

A Well, when I read he is firm in his pants, I look at that as having more than innuendo. I think of that in terms of an erection of a male, a sexual prowess of a male. The macho, I guess that is another way to put it. It is offensive, it is very offensive.

Q What response would you anticipate from a high school audience to this type of speech?

A I would anticipate a lot of parents calling my office being very angry. The principal not being able to carry out his responsibility in a building, because the parents as well as the students would be up in arms of this kind of thing having occurred in an assembly.

(p. 98) Q You indicated that you are involved in sex equity program in Tacoma Schools?

A Umm humm.

Q What impact do you feel that a speech like this would have on a sex equity program?

A Well since I handle a lot of grievances I would be inundated with grievances in terms of mothers asking why we would permit this kind of thing to take place in the school district at any level.

Q Would you anticipate any effect on the learning atmosphere itself?

A I do, because I feel sometimes in a student's life, and I am not sure what that span of age would look like, every time I would hear this or it would come back to mind it would incite to me as a woman that I was less than a being. Someone is talking about, as I read it, a form of sexual intercourse taking place or a sexual act occurring.

Mr. Coats: I have nothing further.

The Court: Cross-examination?

*Cross-Examination*

By Mr. Haley:

Q Mrs. Stewart, did the speech describe Matt Fraser's candidate?

(p. 99) A I don't think it did.

Q Did the speech refer to Matt Fraser's candidate?

A His name was given in the speech, yes.

Q Were any of his characteristics described?

A It says that he was a male, a man.

Q You say that there is sexual innuendo in the speech, is that correct?

A Yes, I did say that I feel that strongly.

Q Does that sexual innuendo refer to any characteristics of Matt Fraser's candidate?

A I don't believe it does.

Q What do you believe that sexual innuendo is referring to?

A I think it is referring to a sexual act occurring, a sexual act being described in the form of innuendo.

Q But that description does not refer in a sexual innuendo to Matt Fraser's candidate?

A I don't believe so.

Q Mrs. Stewart, are you familiar with the topics for education in the schools?

A I like to think that I am.

Q Do the schools have a duty to teach about the U. S. Constitution?

A I believe we do.

Mr. Haley: That is all.

(p. 100) The Court: Mr. Coats?

Mr. Coats: I have no further questions.

The Court: Mrs. Stewart, if Matt Fraser had got up at that time and place in Bethel High School and looked over the crowd and said there is one more male in here, instead of female, and said, my candidate is against women holding public office. I do not believe and my candidate does not believe in females being public office holders and that includes Bethel High School, would that be disruptive?

The Witness: It could be.

The Court: Anything could be disruptive. How about if the speaker was a five foot tall blue eyed blonde with a sweater too small and blue jeans too small just stood there and said, vote for me you all, would that be disruptive?

The Witness: It could be.

The Court: And suggestive?

The Witness: It could be.

The Court: I have no further questions. Any further questions of this witness?

Mr. Coats: I have no further questions.

Mr. Haley: I have no further questions.

The Court: You may be excused.

Mr. Coats: I will call Mr. Rich.

(p. 101) DAVID CLARENCE RICH, having been first duly sworn upon oath by the Clerk, testified as follows:

*Direct Examination*

By Mr. Coats:

Q Would you state your full name and spell your last name, please?

A David Clarence Rich, R-i-e-h.

Q By whom are you employed?

A Bethel School District.

Q In what capacity?

A Principal of Bethel High School.

Q How long have you been principal?

A Seven years.

Q Were you present at this assembly on April 26th?

A I was not.

Q When was the first that you heard about the speech at that assembly?

A When I returned to the building about 2:30 when a staff member approached me and told me the speech had taken place.

Q What did you do at that time?

A I asked Mr. Morrison and Mrs. Ingle to get together with me so we could find out what had happened, what the speech was and if there should be any consequences.

Q What occurred at that meeting?

(p. 102) A We in fact talked a little bit about the speech, the information that we had at that time we discussed. By 2:30 or 3:00 o'clock teachers were beginning to leave the building and there were no students around, so we talked about what was supposedly in the speech. We didn't have a copy of it and since I was going to be out of the building the next day we talked about possible consequences depending upon what in fact was the topic of the speech.

Q Who did you assign to handle this problem?

A Christie Ingle.

Q Why did you assign her?

A For two reasons, one, she handles senior discipline and secondly, she is senior assistant principal.

Q Did you give any instructions as to what the penalty should be for this matter?

A We talked about some possibilities, but I indicated to Christie that since she hadn't had an opportunity to talk to the teachers that were present or students that were present, or to Matt, that she would have to weigh the circumstances and come to a decision.

Q Mr. Fraser has written various columns and made various statements critical of the administration, is that correct?

A Some people would say that, yes.

(p. 103) Q Have you found them to be very critical?

A Slightly critical.

Q Have you ever taken any disciplinary action for that?

A No, in fact I have admired the speeches and the challenging way that they have been written. I think I told Matt that.

Q Did those speeches or articles or any of his part of conduct weigh in the determination of what discipline would be given in this instance?

A Absolutely none.

Q Did you have occasion to meet with Mr. Fraser on April 26th the day of the speech?

A Yes, I did.

Q When did that meeting take place?

A That meeting took place at sometime in the morning.

Q What was discussed at that meeting?

A It had to do with the speeches that were given for graduation, the try out speeches and I had been told by a couple of teachers that perhaps Matt was just playing games as far as the speech, that he had just written it a few minutes or within an hour of when he gave it and it was not even close to the speech that he would be giving at graduation.

Q What did you discuss with Matt Fraser about that?

A I sat down with Mrs. Ingle and Matt and we talked about (p. 104) 40 minutes about graduation, I guess and the fact that it was important to have an appropriate ceremony. We talked a little bit about the fact, I think, that Matt felt that his speech was appropriate—no, this was before we got there. We talked about the importance of a good speech at graduation.

Q What was the result of that conference?

A As I recall, the last words were me saying to Matt, that I have to trust you Matt, that you will do the right thing and get the job done.

Q You weren't there during the assembly?

A No.

Q After the discipline was imposed, there was a three day suspension and also taking him off the list for a potential graduation speaker, is that correct?

A Yes.

Q Have you reviewed that disciplinary action?

A I reviewed that disciplinary action and Matt came in on the second day of the suspension and we talked at that time for probably an hour or more and I then stayed the final day of suspension, the third day of the short term suspension.

What was discussed at that time?

A I think generally the whole concept of the speech and the implications that it had. I think in probably an (p. 105) hour and a half we talked about implication for students, for staff, generally discussed the whole issue.

Q You support both the suspension and keeping him from being a graduation speaker?

A Yes.

Q Why do you support keeping him from being a graduation speaker?

A It is very disturbing to me to have to take that position, because I feel that being selected as the graduation speaker is important, but I told Matt that what he and I believe to be obscene is apparently very much different. What he and I believe to be an appropriate speech in a student body assembly is not in agreement and I indicated why should I think that we would be in agreement for a graduation speech.

Q You referred to his speech as being obscene, I want you to have in front of you a copy of what we agreed was his speech, if you would tell us why you find that to be in violation of the school disruptive conduct rule?

The Court: How many times do we repeat this, counsel? We have got seven witnesses here now and all say the same thing. Is this witness going to add something different or just his position?

Mr. Coats: He is going to offer his position.

The Court: Why didn't you put him on first (p. 106) then, his position, I assume, is the school's position, so why did you need two other vice principals.

Mr. Coats: I think they participated in the disciplinary process.

The Court: Isn't he the captain of the ship?

Mr. Coats: Yes, he is.

The Court: Well, accumulation and repetition isn't going to change anything in this case. That is all I am suggesting to you.

Mr. Coats: It appears to me as we have gone through this that one of the key issues concerns disruptive conduct.

The Court: Who is responsible?

Mr. Coats: He is the chief administrative officer of Bethel High School.

The Court: Why didn't you call him first and we would have had it all over with.

Mr. Coats: Well, I like to call witnesses the other way.

The Court: Go ahead.

Q (By Mr. Coats) The question is how does this violate disruptive conduct rule at Bethel High School?

A As far as I am concerned the speech is obscene. I think that vast numbers of our students feel it is that way, our staff obviously feels it is obscene, since they have (p. 107) signed a statement as such.

Communications that I have had both after this and in the past in my tenure in the school district indicates to me very clearly that the community parents would generally feel it was obscene. There is no question in my mind that it was given because of its obscenity, that the candidate Jeff Kuhlman could have stood on his own as far as being elected without even a speaker.

Mr. Coats: That is all the questions I have.

The Court: Cross-examination.

*Cross-Examination*

By Mr. Haley:

Q Mr. Rich, can you tell me the figure or a typical annual salary for a highly experienced teacher in your high school?

A \$25,000.00.

Q How many school days are there in a school year?

A 180 school days.

Q Are teachers in your school required to report violations of school rules?

A They have some parameters, some judgment to use in this.

Q Do you ask them in general to report violations of school rules?

(p. 108) A I ask them to use their judgment as far as the seriousness and the nature of the violation.

Q If they say that a violation of the school rules is about to take place, do you ask them to take some action?

A It depends upon the seriousness. They are asked to step in and deal with things as much as possible. We don't ask them to report every single item that they see.

Q If they could very easily avert a violation of the school rules before it happened, do you ask them to do so?

A Yes.

Q Why did you not stay the remainder of the second day of suspension pending appeal when you stayed the third day of suspension pending appeal?

A Only because when our conversation finished it was about 12:00 o'clock. Our school only runs to 1:55.

Q Why did you not allow him to return to school for the remainder of that day?

A I choose not to, although I did indicate that he could go speak to a teacher who I think must have been on conference period at that time.

Q So why did you choose not to allow him to return to school for the remainder of that day?

A Because I chose to uphold the suspension through the second day, because the second day was almost over (p. 109) anyhow.

Q Why did you differentiate between the remainder of the second day and the third day?

A Other than I reduced the suspension is the only thing I can say and that is when I chose to do that. I didn't see a significant advantage or disadvantage for Matt going back to school and being at school for an hour and a half.

Q Did you tell me on the telephone that you didn't want Matt to be in school the rest of that day because you expected student protest in opposition to the punishment imposed on Matt and you didn't want him to participate in the student protest?

A I don't recall that conversation.

Mr. Haley: I have no further questions.

The Court: Any redirect?

*Redirect Examination*

By Mr. Coats:

Q. Did the student protest on the second day have anything to do with your judgment of not having him go back for the last hour and a half?

A. No.

Mr. Coats: That is all the questions I have.

The Court: Recross.

(p. 110) Mr. Haley: I have no recross.

The Court: Mr. Rich, what is an appropriate graduation speech that would be agreeable to you, sir?

The Witness: I think almost any graduation speech would be appropriate as far as I am concerned. I don't have any difficulty with graduation speeches or speeches of a political or controversial nature, but a speech at graduation or a speech at an assembly to which I believe, and I think that my experience and contacts support that, that I believe will be as upsetting and create disturbances amongst students, staff and community members then I believe that I have an obligation to be involved.

The Court: Are you familiar, sir, with the anti Vietnamese speeches in the high schools and colleges in the late 60's and early 70's?

The Witness: Yes, I am.

The Court: Do you know that those were upheld as freedom of speech by the United States Supreme Court?

The Witness: I agree.

The Court: Wasn't that disturbance?

The Witness: I don't know, I wasn't involved.

The Court: You know the situation I am talking about?

The Witness: Yes.

(p. 111) The Court: Didn't that disagree with the position taken by the United States, surely that would cause disturbance, wouldn't it?

The Witness: I would assume it would, yes.

The Court: In your opinion, sir, is the word inappropriate synonymous with disturbance?

The Witness: It can be.

The Court: Why, what in the rules of the Bethel High School interprets that or defines it so that someone unfamiliar with it could have some reasonable idea as to clarity of the rules that I am violating?

The Witness: I would like to answer if I could this way. It is impossible for us in a student handbook to identify all of the violations. We can't cover all of the bases, all of the things that students could possibly do, so there are some areas that are left to some judgment and we have to make judgment calls every day. We don't have a rule that prohibits a student from riding down the hall on a motorcycle, but I hope we have the authority to stop them from doing that.

The Court: That is conduct.

The Witness: That is right, or for throwing things in the lunchroom or perhaps some other kinds of things that are disruptive to kids there and I guess what I am saying is that we don't have regulations to (p. 112) cover every single kind of an instance that might occur.

The Court: I guess is what makes lawsuits. All right, I have no further questions.

Mr. Coats: I have nothing further.

The Court: You may step down, sir.

Mr. Coats: I have no further witnesses, your Honor.

The Court: Do you want to argue?

Mr. Haley: Before we present argument I would like to present a couple of short witnesses.

The Court: What are they going to add to it?

Mr. Haley: I would like to—

The Court: Make an offer of proof.

Mr. Haley: I would like to present testimony regarding a speech that was given a year ago and the fact it is just as obscene and contains—

The Court: I will consider that. Anything else?

Mr. Haley: I would like to present testimony that the student behavior that Mr. McCutcheon described takes place in many of the places around the school besides this particular assembly on this particular day and many other situations.

I would like to present a very brief bit of rebuttal testimony regarding disruption.

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PLAINTIFF'S EXHIBIT NO. 1  
(5 letters concerning Fraser's speech)

4-26-83

On the afternoon of Tuesday, April 26, Matt Fraser came into my room and asked me to listen to the nominating statement he planned to deliver at that afternoon's ASB Elections Assembly. After excusing myself from another student, I agreed to listen to what he had written. At the conclusion of his statement I attempted to warn Matt that what he planned to say was going to cause problems and would certainly raise eyebrows of shock and surprise. I chose to avoid challenging Matt or passing judgment on the content of his statement's morality or possible profanity. I felt that besides being a matter of disputable or ambiguous interpretation that I might be able to successfully reason with Matt to avoid the certain negative consequences of delivering his planned statement altogether. Matt seemed determined to deliver this statement nonetheless, and after discussing his resolution for a few moments, he left. After the assembly Matt returned to my room and told me that he had read his planned nominating statement and that he believed he was in trouble.

Steven D. DeHart

4/27/83

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4/26/83

When he gets a point he drives it home.  
(Something about sticking it in the wall)  
Doesn't work in spurts—(stays with it)  
Even willing to bring things to a climax  
The word "come"

Russ Olson

April 27, 1983

From: Dona L. Mantey, teacher

Re: Matt Fraser's speech at assembly on April 26, 1983

Matt Fraser spoke in front of the student body to introduce his candidate for the office of Vice President of the ASB. He started his speech by saying his candidate was "firm," which produced an immediate reaction from the student body (laughing; cheers etc).

Matt continued his speech by saying how "hard-driving" his candidate was. He said his candidate "would even go to the climax" for the students and "would come."

Each one of the statements in quotes was emphasized by significant pauses and use of voice inflection, to evidently assure that no one missed the meaning. The students, by their reactions (laughing; cheering; whistling) appeared to understand exactly what Matt's intent was in using these phrases.

My personal opinion is that the speech was inappropriate and was not what I would consider subtle sexual reference, but rather intentionally blatant.

There were more sexual references in his speech, but I cannot recall exactly what they were.

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**TO:** Bethel High School Administration  
**FROM:** Sean L. Madden, Language Arts Teacher  
**RE:** Deposition re: Speech delivered by Matthew Fraser to Student Body, April 26, 1983.  
**DATE:** April 27, 1983

Herein I will analyze the aforementioned communication incident with my observations as a professional communicator. I must preface the analysis with a summary of generally accepted principles of the process of communication: 1) Communication is a mutual responsibility of both sender and receiver; 2) All messages must be encoded and subsequently decoded, thus the probability of translation difficulty is significant; 3) Meaning exists only in minds not in fact; 4) The determinants of meaning are denotation, connotation, structure, and context.

Based on these principles, what I observed on 26 April, 1983, was Matt Fraser sending a message to a number of receivers. That message could be interpreted in multiple ways as evidenced by audience reaction. The denotation of each word delivered, however, could be interpreted as nothing other than acceptable. The structure of the message suggested nothing other than reference to positive character qualities of the candidate nominated by Mr. Fraser. The context was obviously one of politics, therefore, Mr. Fraser's words should have been construed to refer only to his candidates political characteristics. The problem arose in the area of connotation. To the teenage audience present, several words could be taken out of context to refer to sexual activity. This connotation was taken by several receivers of the message. Responsibility

for connotative interpretation must lie with the receiver by its very nature. My conclusion thus must be that the bulk of the students present and several faculty members must be held responsible.

Overall, nothing was said which could be in and of itself offensive.

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To Whom It May Concern:

I did not attend the assembly on 4/26 but Matt allowed me to read his speech the following morning. I told him that I felt it was inappropriate for the situation. While I agreed that it was cleverly written, I told Matt that I felt the reason he was using this was because the student body would interpret the speech in its profane meaning.

Duane A. Little

4/27/83

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**PLAINTIFF'S EXHIBIT NO. 2**  
(decision of school district hearing officer)

**CASE NO. 25, #1982-83**

**IN THE MATTER OF THE SHORT-TERM )  
SUSPENSION AND DISCIPLINE OF: )  
MATT FRASER )**

This matter comes before Bruce Alexander, designated hearing officer for the Bethel School District, in response to Matt Fraser's grievance of a three-day suspension from Bethel High School and removal of his name from the list of candidates for graduation speaker. Although Matt Fraser, through his attorney, was advised that the District would provide a full hearing in this matter if requested, he has submitted his grievance in the form of a letter from his attorney, Mr. Haley, dated May 3, 1983. This matter has been determined on the following record:

1. The written copy of a speech delivered by Matt Fraser to the Bethel High School student body assembly on April 26, 1983.
2. The notice of the short term suspension of Matt Fraser for "Disruptive Behavior" dated April 27, 1983.
3. The "Request for Grievance Review" letter by Jeffrey T. Haley, Attorney for Matt Fraser dated May 3, 1983.
4. Bethel Senior High School Student Handbook, 1982-83.
5. Bethel School District Policies.
6. Testimony and written statements from Bethel High School Principal, David Rich, and other staff members regarding the issues of the suspension.

## I. FINDINGS

1. Matt Fraser is a senior student enrolled in Bethel High School and is scheduled to graduate in June 1983.
2. On April 26, 1983, Matt Fraser delivered a prepared speech in his sixth period classroom to the teacher and a group of students. The text of the speech is attached as Exhibit "A" to this decision. He was advised by the teacher that the speech was inappropriate for an intended delivery at a school assembly. Matt was similarly warned by another teacher to whom he had read the prepared speech. In both instances, Matt indicated that he was going to deliver his speech as prepared.
3. On April 26, 1983, students were required to attend either the assembly or a study hall. Matt Fraser delivered the above noted prepared speech to the total high school assembly.
4. The text of the speech contains a number of words and phrases with sexual innuendoes and connotations. Matt used dramatic pauses and voice inflection to emphasize the sexual overtones of his speech. During the course of the speech, many students reacted with loud laughing, cheering, whistling, foot stomping, and clapping.
5. On April 27, 1983, at least six written statements were delivered to Mr. Rich by teachers who were concerned that Matt Fraser's speech was inappropriate and disruptive at a high school assembly.
6. On April 27, 1983, at least one teacher wrote to Mr. Rich that the educational process for most of her first period class was disrupted due to a student discussion of said speech. Student consensus in this class about the speech was negative. The students' statements indicated "they felt embarrassed, disgusted and insulted" by the speech. Classroom disruptions were reported by other teachers following the speech.

7. After Matt Fraser delivered the speech on April 26, 1983, Mr. Rich, Principal at Bethel High School, called him at home and directed him to report to his office Wednesday morning. On Wednesday, April 27, 1983, Matt Fraser met with Ms. Ingle, Assistant Principal of Bethel High School. At this conference, he was given both oral and written notice of his alleged misconduct and the alleged violation of the applicable school district rule, and copies of written evidence in the District's possession in support of the allegations against him. Matt Fraser was provided an opportunity to present his explanation of the circumstances. Ms. Ingle imposed punishment for a violation of the school's disruptive conduct rule consisting of a three-day short term suspension and removal of his name from consideration as a graduation speaker. Matt Fraser was given an explanation of this punishment and provided a copy of the appeal/grievance procedure. Following this conference, Ms. Ingle called Matt Fraser's mother and informed her of the District's action and the reasons supporting it.
8. Matt Fraser subsequently initiated a grievance of this action and on Friday, April 29, 1983 the District stayed the final day of the three-day suspension and removal of Matt's name from the ballot for graduation speakers pending the determination of his grievance at the Superintendent's level.
9. The speech Matt delivered conveyed a sexual meaning that was indecent, lewd, and offensive to the modesty and decency of many of the students and faculty in attendance at the assembly. The speech also caused a material and substantial interference with the education process by provoking a boisterous and unruly response from many students during the assembly and in subsequent school classes.
10. The 1982-83 Student Handbook of the Bethel Senior High School, in Section 1, contains rules governing the conduct of students at Bethel High School. On page

8, the section entitled "District Offenses" provides, in relevant part:

In addition to the criminal acts defined above, the commission of, or participation in certain non-criminal activities or acts may lead to disciplinary action. Generally these are acts which disrupt and interfere with the educational process.

...

*Disruptive Conduct.* Conduct which materially and substantially interferes with the educational process is prohibited including the use of obscene, profane language or gestures.

This rule book has been made available to all students of Bethel High School and their parents on an annual basis.

11. The suspension and discipline imposed on Matt Fraser was not influenced by any prior criticism he has made concerning the school administration and was not intended to suppress ideas or political views.

## II. CONCLUSIONS

- 1) The hearing officer has jurisdiction over both the subject matter and the parties to this grievance procedure pursuant to R.C.W. 28A.58.101 and Chapter 180-40 WAC.
- 2) Bethel High School's rule entitled "Disruptive Conduct" was validly enacted.
- 3) The term "obscene" in the disruptive conduct rule must be given its common and ordinary meaning. Conduct or language is "obscene" if it is "offensive to modesty or decency; indecent, lewd." Random House Dictionary of the English Language, at 994 (1969).

- 4) Matt Fraser's speech was obscene within the meaning of the disruptive conduct rule and violated that rule.
- 5) Matt Fraser's speech was conduct that materially and substantially interfered with the educational process in violation of the disruptive conduct rule.
- 6) Both the three-day suspension and removal of Matt Fraser's name from consideration as a commencement speaker is reasonably warranted by the nature and circumstances of his conduct.
- 7) Based upon prior warning given to Matt Fraser concerning delivery of his speech, imposition of a short term suspension and discipline was justified because the District had good reason to believe that other forms of corrective action or punishment would fail if employed.
- 8) The disciplinary action and suspension were administered in accordance with the procedural and substantive requirements of Chapter 180-40 WAC.
- 9) The District's action did not violate Matt Fraser's right, as incorporated by WAC 180-40-215, to engage in constitutionally protected speech.
- 10) The disciplinary action and three-day suspension regarding Matt Fraser should be affirmed.

### III. DECISION

The three-day suspension of Matt Fraser and the removal of his name from the list of candidates for graduation speaker is affirmed.

DATED this 17th day of May, 1983.

/s/

J. BRUCE ALEXANDER, Ph.D.  
Hearing Officer  
Bethel School District No. 403

lsl

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